MARCH 2010

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INSIDE ALEC

A PUBLICATION OF THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL

FOCUS ON
LEGAL REFORM

States to the Rescue
Tort Reform Options that Congress Won't Touch

Court Challenges to Tort Reform

Call for Transparency in State Attorneys General Offices

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SOUTH CAROLINA

Tort Reform Success in the Palmetto State

BY SEN. LARRY MARTIN (SC)

In 2005, South Carolina improved the state's legal climate by passing general tort reform as well as specific changes to the medical malpractice statutes. Although a major step forward, the 2005 tort reform legislation only dealt with four business-related issues: venue, joint and several liability, statute of repose, and post-judgment interest rates. Many major issues were not resolved and several new ones have been created by judicial decisions since 2005.

Larry A. Martin is a Republican member of the South Carolina Senate, representing District 2 (Pickens County) since 1992. He previously served in the South Carolina House of Representatives from 1979 through 1992. Sen. Martin is a leader in the South Carolina Senate and serves as Chairman of the powerful Senate Rules Committee, where he was instrumental in major reforms of the Senate rules of procedure in 2001 and 2005. He also serves on the Banking and Insurance; Education; General; and Judiciary committees.

South Carolina continues to receive low rankings from the U.S. Chamber of Commerce for its unfair lawsuit climate and is currently ranked 43rd for its legal environment. Also, punitive damages reform remains a top issue with the state and national business community especially in light of a recent South Carolina court decision, *Mitchell v. Fortis*. In this case the plaintiff was awarded $186,000 in compensatory damages and $15 million in punitive damages at the trial level. (On appeal, the South Carolina Supreme Court reduced the punitive damages award to $10 million. The Court justified this reduction by using a very high ratio between punitive and compensatory damages, and by considering "potential harm" to the plaintiff rather than actual damages suffered by the plaintiff.)

Speaker Bobby Harrell has joined with me and a number of cosponsors in laying the groundwork for further comprehensive tort reform in South Carolina. Last year, we introduced House Bill 3489 and Senate Bill 350. Several public hearings on tort reform have been held by a Senate Judiciary Subcommittee and are continuing as this is being written. Many provisions of the proposed legislation are based largely on ALEC model legislation. We are studying changes to several areas, including:

- Punitive Damage Standards
- Admissibility in Civil Actions of Nonuse of Seat Belts
- Statute of Repose
- Appeal Bond Waivers
- Class Action Improvements
- Private Attorney Retention Sunshine
- Piercing the Corporate Veil
- Regulatory Compliance Congruity with Liability
- Consumer Protection

Other southern states that have enacted similar, common-sense solutions are seeing positive results. Both Mississippi and Texas have reported significant reductions in insurance rates since those states enacted tort reform. In order to create and maintain a business-friendly environment here in South Carolina, we must continue our efforts to make our state competitive with our neighbors.

Boeing officially announced that a new assembly plant will be located in South Carolina, bringing thousands of jobs for the citizens of our state. We need to encourage other businesses to come to South Carolina by enhancing the business and legal environments for the benefit of both our existing businesses and for prospective new businesses.

Court Challenges to Tort Reform

An Ounce of Prevention is Worth a Pound of Cure

BY CHARLIE ROSS

There is an old truism: An ounce of prevention is worth a pound of cure. Nothing could be truer with court challenges of tort reform legislation. Passing good legal reform legislation is for naught if the legislation is later watered or struck down in a court challenge—and given that trial lawyers have so much at stake, such challenges are virtually inevitable. For this reason, cutting off challenges with careful and strategic drafting should be an important part of any legislative tort reform strategy.

Unfortunately, many challenges to tort reform measures have been successful. Illinois' cap on non-economic damages was recently struck down on separation of powers grounds. Caps in other states have also been struck down. In Mississippi, a very effective legislative requirement that Plaintiffs give physicians sixty days written notice before a malpractice suit "may be begun" was deemed to be an infringement on the judiciary's rules of procedure. (It was ruled that the Plaintiff, who had "willfully ignored" the pre-suit requirement, had nevertheless tolled—or paused the timer on—that statute of limitations by filing the Complaint in violation of the statute, and thus, could refile, despite the running of the normal limitations period.)

To avoid such outcomes, wise legislators trying to enact tort reform, should ask themselves on the front end: How can I draft my legislation to avoid a court later watering it down or striking it down? The following is a short, non-exhaustive list of principles to consider in answering this question.

Specifically address often-litigated issues pertaining to the subject matter of the legislation

(With statute of limitations legislation, for example, the tolling issue is critical.) Specify what, if anything, will allow or delay the start of the limitations period, or an interruption in the running of the limitations period. With non-economic caps, is the cap per plaintiff, or per defendant? With any tort reform measure, such issues exist. Gaps and ambiguities create the opportunity for mischief. So, take the time to identify these issues, and, to the extent possible, address them in the wording of the legislation.

Include legislative intent in the legislation

This is especially true since many state legislatures do not keep transcripts of committee hearings and floor debates. As an example, the Mississippi Tort Reform Legislation of 2004 immunized sellers of a good in strict liability products actions if the seller did not have "actual or constructive knowledge" of a defect in the good at the time of sale. "Actual or constructive knowledge" is a phrase arguably subject to varying interpretations. To ensure the courts would better understand what "actual or constructive knowledge" meant, the legislation also stated: "It is the intent of this section to immunize innocent sellers who are not negligent, but instead are mere conduits of a product." *See Miss. Code § 11-1-63(h).*

Include a severability provision

In the bill, include a severability provision that states that if any part of the legislation is found invalid, the rest of the legislation remains valid. Further, to the extent possible, put distinct separate substantive provisions in separate subsections of the bill so severability will be easier.

Charlie Ross is a former ALEC Member, Mississippi State Senator and Member of the Mississippi House of Representatives. He is currently an attorney in Brandon, Mississippi.

Phrase statutes in concepts that have traditionally been the prerogative of legislative enactment

Doing so can often avoid the separation of powers argument often used to challenge tort reform measures. As examples, venue and jurisdiction (both personal and subject matters) are areas generally governed by statute.

To illustrate, if a statute says "a court shall not have jurisdiction to adjudicate a medical malpractice action unless the pre-suit notice requirement is met," it is much more difficult for a court to say the requirement is a just rule of procedure which is the court's sole domain. Likewise, with damage caps, consider wording stating that "no court shall have jurisdiction to impose non-economic damages in excess of …"

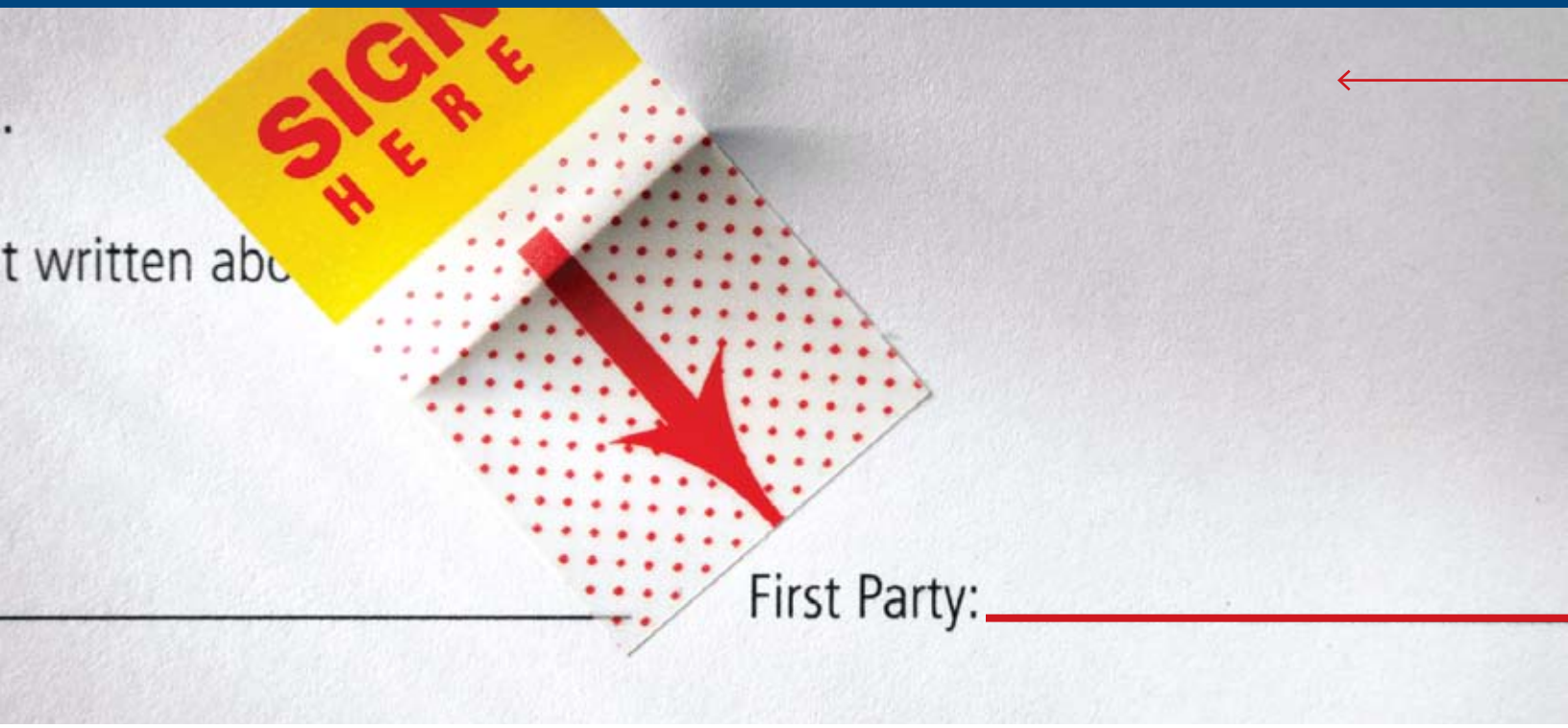
An example of how venue was used effectively is the Mississippi effort to address mass tort lawsuits. Hundreds of plaintiffs were allowed to join in one lawsuit against multiple defendants, creating mass confusion and the opportunity for plaintiffs (often with meritless cases) to extort mass settlements. Many (probably most) plaintiffs were from out-of-state or in-state venues with no connection the chosen venue.

The Mississippi legislature could have tackled the issue head on by passing a statute addressing joinder of parties in litigation. But, that approach was fraught with constitutional concerns, given the holdings of the Mississippi Supreme Court stating that court practice and procedure matters were the sole province of the courts due to separation of powers. To avoid this problem, the legislature instead used venue language, stating that "each plaintiff shall independently establish venue; it is not sufficient that venue is proper for any other plaintiff in the civil action." See Miss. Code. § 11-11-3. In essence, the statute said that in addition to complying with the court's joinder rule (however interpreted), plaintiffs must also comply with a strict venue requirement. Thus, the goal was largely accomplished while side-stepping a constitutional challenge.

Every state legislature and court system is unique

What is a pitfall in Mississippi may not be in Missouri, and vice-versa. As such, it is critical to consult with legal counsel who understand both the state's courts and its legislature when drafting tort reform legislation. Doing so is the first step in implementing the above principles or others that may be germane.

Careful drafting of tort reform legislation is only one part of a tort reform fight, but, it is a critical one. Careful, strategic drafting greatly increases the chances of success in the later court challenges, which almost inevitably will come. Since the ultimate goal is legislation that withstands challenges and actually works, careful and strategic drafting should be an essential part of any tort reform strategy. ■



Call for Transparency in State AG Offices

Sign on to ALEC's Letter to the National Association of Attorneys General

IT HAS COME TO OUR ATTENTION that the National Association of Attorneys General (NAAG) plans to consider "best practices" for attorneys general, one part of which we hope will focus on the hiring of outside counsel by the state. As you may know, one of the star pieces of model legislation put together by ALEC's Civil Justice Task Force is the *Private Attorney Retention Sunshine Act* (PARSA), a bill that would shed some light on contingency fee contracts between state attorneys general and private attorneys in an effort to keep such contracts in the public's eye and to promote the hiring of attorneys based on merit not patronage.

The problem of state attorneys general hiring outside counsel who have heavily contributed to their campaigns and who may not provide the best deal for the state is rampant. Too often these deals between public officials and private contingency fee lawyers are sealed behind closed doors. With no public oversight, the attorney selection process can easily be abused for personal gain and political patronage.

When government entities contract for goods and services, the bidding is generally done through an open and competitive process. "Sunshine" laws ensure that these transactions are above board and result in the best use of taxpayer dollars. ALEC's *Private Attorney Retention Sunshine Act* would apply the same practices to the hiring of outside counsel. By implementing a competitive proposal process, providing for legislative oversight of high-dollar contracts, and keeping a deduced hourly fee from topping $1,000, PARSA provides the sunshine needed to encourage contracts to be in the best interest of the state. With states struggling with fair-weather economies and budgets, it is ever more important that state recoveries from AG-initiated litigation be allocated to critical state priorities rather than be pocketed by contractors of the state.

To sign on to the letter on the following page, or to ask any questions, please don't hesitate to contact me.

Amy Kjose, Director
ALEC Civil Justice Task Force
akjose@alec.org | (202) 742-8510

Dear Mr. McPherson [Executive Director, NAAG]:

We are writing to express our concerns about the hiring of contingency fee counsel on behalf of many states, and the lack of transparency and accountability in these hirings.

Following the landmark recoupment lawsuits against the tobacco industry, contingency fee attorneys have increasingly made political donations to state officials who make decisions on potentially lucrative legal contracts. As was highlighted in a recent *Wall Street Journal* article, "Trial Lawyers Contribute, Shareholder Suits Follow," well documented abuses seem to be increasingly prevalent, only worsened by the lack of transparency and accountability in the hiring process.

While there can be valid reasons for hiring outside counsel by the state in certain instances, such arrangements often present a conflict of interest as they transform the lawyer-fiduciary into a self-interested actor who is motivated by his or her own financial objectives and not that of the taxpayers. This conflict and the appearance of a quid pro quo in receiving political donations from law firms that then are awarded contracts has led many state legislative leaders and attorneys general to call for standards by which these relationships should be governed.

To shed some light on such political patronage, the American Legislative Exchange Council (ALEC) has developed model legislation called the Private Attorney Retention Sunshine Act (PARSA). The legislation is based on common-sense, good-government principles of transparency, accountability, and disclosure, and seeks to rein in the most abusive practices by:

- Requiring a competitive proposal process to procure outside counsel in a manner that is consistent with state procurement policies;
- Requiring legislative approval of most large contingent fee contracts between government and contingent fee attorneys;
- Requiring contingent fee attorneys to keep accurate time records and establish an hourly rate based on recovered damages rather than hours spent on the case;
- Restoring the legislature's authority in the appropriations process.

By making the retention of outside counsel subject to reasonable public scrutiny and limits, the interests of the public can be insulated from attorneys whose interests are centered around profit rather than public benefit, and targeted defendants can be encouraged that their dealings with state governments are focused on justice, accorded due process, and instilled with an element of fundamental fairness.

Serving as a multi-state model, PARSA has been crafted to fit within the existing state law and statutes to meet the technical realities of each state. In the past several years, Colorado, Connecticut, Kansas, Minnesota, North Dakota, Texas, and Virginia have enacted legislation based on this model.

While numerous states have adopted legislation based on PARSA, we believe the issue is of wide enough concern for the National Association of Attorneys General (NAAG) to take our issues into consideration. As such, we would encourage NAAG to adopt baseline "best practices" with the simple, good-government principles embodied in the PARSA model legislation. We have enclosed a copy of the model legislation with this letter for your further consideration.

Sincerely,

Sen. William J. Seitz, Ohio
Civil Justice Task Force Chairman

Rep. Thomas R. Craddick, Texas
ALEC 2010 National Chairman

Spkr. William J. Howell, Virginia
ALEC 2009 National Chairman
Former Civil Justice Task Force Chairman

Boehner to President Obama:

"Your Health Care Bill is Unconstitutional"

BY GOP LEADER PRESS OFFICE

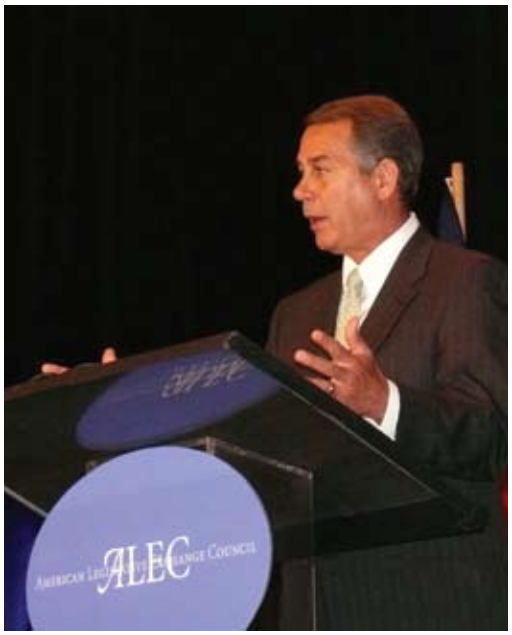
During [the Feb. 25, 2010] health care summit at the White House, House Republican Leader John Boehner (R-OH) told President Obama directly that the "individual mandate" included in the Democratic health care legislation being ushered through Congress is unconstitutional.

"It's not just the taxes or the Medicare cuts. You've got the individual mandate here, which I think is unwise and I do believe is unconstitutional," Boehner told President Obama.

Boehner's remark drew a sharp response from the president, who suggested the Republican leader was resorting to "talking points" instead of engaging in a productive bipartisan dialogue. But Boehner is hardly alone in his belief that the president's legislation is unconstitutional, and it isn't just Republicans who have raised the issue. State lawmakers in at least 36 states have introduced legislation in their state legislatures to declaring their states' freedom from ObamaCare's unconstitutional individual mandate. Banding together through the nonpartisan American Legislative Exchange Council (ALEC), many of these lawmakers sent a letter to President Obama earlier this week expressing their disapproval of the White House decision to exclude governors and state legislators from the health care summit.

"We know that any federal health care legislation will eventually rely on the states to implement, manage, and fund the reform effort," the state legislators wrote. "Many state legislators, like us, are also concerned about the effects that a proposed individual or employer mandate will have on our citizens and small businesses. We are disappointed that state legislators have not been involved in this effort and that you would not include state legislators in [the Feb. 25] meeting."

In Congress, Boehner and Rep. Devin Nunes (R-CA) have been urging colleagues to get involved with the state-level revolt brewing against ObamaCare. Boehner, Nunes, and Rep. Mike Rogers (R-MI) last year launched the GOP State Solutions project, an initiative aimed at improving legislative coordination between reform-minded House Republicans and governors and state legislators outside the Beltway.



U.S. House of Representatives Minority Leader John Boehner (R-OH) spoke to ALEC Members at the 2009 States and Nation Policy Summit in Washington, D.C.

Boehner says the White House's exclusion of state legislators is disappointing, but certainly in keeping with the Obama Administration's Washington-knows-best mentality:

"It is greatly disappointing that state legislators haven't been given a role in this summit, despite the fact that legislation opting out of a federal takeover of health care has been introduced in at least 36 states. Limiting participation in this summit to Obama Administration officials and congressional leaders shuts out state lawmakers who can help illustrate the damage this massive federal takeover of health care would do to states. The White House may be in denial about the revolt going on in the states against this costly, job-killing monstrosity, but it's real and it's gaining momentum by the day."

A September 2009 article in the *New York Times* documented state efforts to opt-out of ObamaCare's unconstitutional individual mandate.

"[A] small but growing group of lawmakers is pressing for state constitutional amendments that would outlaw a crucial element of the health care plans under discussion in Washington: the requirement that nearly everyone buy insurance or pay a penalty," the article noted. At the time the article was written, about a dozen states had introduced such resolutions. As of February 2010, such measures have been introduced in a total of 36 states. ■

Who's Afraid of IT Outsourcing?

BY STEPHEN TITCH

Structurally, IT outsourcing is no different from other forms of government outsourcing or privatization. However, unlike roads, parks and recreation, and sanitation services, IT encompasses the entire spectrum of government operations. The largest projects affect almost every government employee.

IT outsourcing generally entails a contract with a private sector company that agrees to manage the IT infrastructure assets of the state (or city or subdivision). Under the arrangement, the prime contractor manages procurement, integration, operations, maintenance, and overall health of the IT infrastructure, as per scope of the contract. The prime contractor also employs IT personnel and brings in subcontractors where needed. The government generally retains ownership of IT equipment—computers, servers, software, and network hardware.

Above all, the outsourcing company has accountability for a successful IT transition, the effective function of operations, and the overall performance of the IT infrastructure.

There are a number of reasons IT outsourcing is attractive. To begin with, it streamlines multiple and incompatible information system. This is the same reason that outsourcing was embraced by the private sector ten to 15 years ago. While it once made sense for different departments to use different types of systems, the emergence of Internet protocol and other common connectivity standards led to a new generation of IT systems that were far more compatible. That meant the various systems used throughout even the largest of organizations could operate on a common technology platform and share capital-intensive resources, such as data centers and help desks, much more easily.

Hand-in-hand with common, compatible information systems goes cost reduction. Together these two factors are driving the push toward IT outsourcing. The state of Georgia, which is integrating the information systems of 11 agencies as part of an eight-year, $873 million outsourcing agreement with IBM, expects to save $180 million in IT costs over the life of the contract. In addition, states and municipalities want to use their IT resources to support online services, meet new requirements from federal government, such as in homeland security, immigration,

Steven Titch is a Telecom and Media Policy Analyst at the Reason Foundation.

and changes in driver's licenses; and to improve communications between state agencies, maintain correct and up-to-date information in common data, and reduce errors.

Benefits of Outsourcing

But there more benefits to outsourcing than greater savings and operations efficiency. Most IT outsourcing contracts require contractors to schedule regular upgrades to technology. This keeps state IT systems up-to-date with the latest software releases, be it Windows or Linux-based. Applications, such as word processing, spreadsheet, and Web browsers are kept current, as are more specialized software pertaining to database management, accounting, and IT security.

IT outsourcing and privatization also moves city IT workers into the higher-paying private sector, which tends to make rank-and-file staff more open to the idea. States also need not re-invent the wheel; outsourcing models has existed for years in the corporate sector and can be readily adapted for state and local governments. At the same time, outsourcing is a buyers' market. In addition to IBM, major IT outsourcing companies such as Accenture, Hewlett-Packard, Juniper Networks, Northrop Grumman, and Unisys are contributing to a highly competitive field.

Finally, IT outsourcing and privatization tends to be less politically controversial than other privatization efforts. Unlike many other state and municipal services, IT never took hold as a "government-provided" service in the voter consciousness. Also, state IT systems rarely touch the average citizen, unless there is a problem, such as an erroneous record or a frustrating on-line experience.

Nonetheless, there are risks. IT outsourcing generally involves lengthy contracts with high price tags—as with Georgia's $873 million project and, in Virginia, a ten-year, $2.3 billion contract. No matter what the promised savings, such sums can give any legislator pause, especially in the current economy. And while many state and city government employees are offered more lucrative work with the contractor, not every job is retained.

Lessons Learned

States and cities considering IT outsourcing and privatization can adapt best practices and learn lessons from projects already underway. It's fair to say that most projects encounter hurdles, but some stand to show that mistakes can be overcome.

Georgia has been one of the most successful to date. Virginia, on the other hand, has been plagued with problems. In between are a number of other high-profile city, state and county projects, including Minneapolis, and the County of San Diego.

In Georgia, the Georgia Technology Authority, created to manage the outsourcing process, awarded the eight-year, $873 million contract in November 2008. The prime contractor was IBM. Subcontractors were AT&T, Dell, and Xerox.

The city of Minneapolis signed a five-year contract with Unisys which includes, among others items:

4,500 employees

4,400 e-mail boxes

3,650 desktop devices

1,100 printers

The goal was to consolidate 11 independent IT environments:

- Administrative Services
- Community Health
- Corrections
- Driver Services
- Georgia Bureau of Investigation
- Georgia Technology Authority
- Human Resources
- Juvenile Justice
- Natural Resources
- Planning and Budget
- Revenue
- Technical and Adult Education

Under the contract, IBM is to deliver by May 2011:

- An enterprise-wide service desk with 24/7/365 coverage;
- Consolidation of application servers and data storage;
- Consistent IT security;
- Improved disaster recovery;
- Standardized service levels across all agencies;
- Comprehensive asset management;
- Up-to-date technology through regular equipment upgrades.

This process got underway in April 2009. All 291 state employees involved in infrastructure services were offered jobs with IBM. Of the 191 state employees involved in managed network services, 33 were offered jobs with IBM or subcontractors. State employees absorbed retained benefits with no waiting time and years of service were recognized.

The City of Minneapolis signed a second five-year contract ($48 million) with Unisys in 2008. The contract turns technology planning, end-user support, data center management and network management over to Unisys and involves all agencies of the city government, including the mayor's office, city council, fire and police departments, and the public works department.

The scope of the Minneapolis contract takes in 4,500 employees, 210 server computers, 4,400 e-mailboxes and more than 330 network devices,

(***Outsourcing**, continued on p. 15)*

States to the Rescue:

Tort Reform Options that Congress Won't Touch

BY AMY KJOSE

Inherently part and parcel to the health-care debate, tort reform has been the large elephant in the room that trial-lawyer-funded congressmen haven't been eager to embrace. Howard Dean gave up the secret himself: "The reason that tort reform is not in the [main health-care] bill is because the people who wrote it did not want to take on the trial lawyers in addition to everybody else they were taking on, and that is the plain and simple truth."

Unfortunately, on the national level, this irreplaceable reform hasn't been given the attention it deserves. Is it the single answer to improving state health-care systems? Certainly not. However, does tort reform need to be enacted to save health-care dollars and otherwise improve efficiency in troubled legal systems? Absolutely.

Defensive medicine—the ordering and performing of unnecessary tests, procedures, and referrals by doctors in fear of litigation—is a serious problem. PriceWaterhouseCoopers estimated that the practice of defensive medicine increased health-care expenditures by 10 percent or $210 billion in 2006.[1] Ninety-three percent and 83 percent of doctors in Pennsylvania and Massachusetts, respectively, admitted to practicing defensive medicine.[2] Thirty-eight percent of Massachusetts doctors even admit to limiting the number of high-risk procedures for fear of litigation.[3] The practice of defensive medicine is adversely affecting both cost and quality of care.

And the vast majority of voters, 83 percent, recognize this problem and want some form of legal reform—resounding support among citizens, but paltry support in Congress. Fortunately, the government closest to the people can govern best. Reforming state legal systems should be a primary objective of state legislators no matter their political alignment.

On a broad scale, tort reform needs to be better understood. It is not just a conservative issue. Tort reform includes, but is certainly not limited to, caps on the non-economic damages (i.e., punitive damages and subjective damages, like pain and suffering) recoverable by

Amy Kjose is the director of ALEC's Civil Justice Task Force.

plaintiffs. There are many more options and necessities. In fact, ALEC's Civil Justice Task Force has dedicated much of its time and resources to identifying specific problems often felt by state legal systems and their multifaceted solutions—whether narrow to fix a particular abused ambiguity in the law or broad to reconfigure a procedural inefficiency in the civil-justice system.

For those legislators interested in comprehensive legal reform, for those legislators interested in fixing parts of their legal system that may not be performing up to snuff, for those legislators interested in improving the efficiency of their state legal system while not quite capping damages, you have many options—many reforms need to be undertaken to fix the mals of an ailing legal system. And every reform can and will make a difference—in an effective health-care system that will have more appropriate pricing, in job production encouragement, and in a state's business competitiveness.

Reform Expert-Witness Rules

When a case goes to trial, each side often seeks the help of experts who can provide scientific facts and professional opinions. Information provided by these experts can have paramount influence on the outcome of a case: the research and opinion of a trained expert is taken to be much more reliable than a standard witness. For this reason, it is imperative that these experts are indeed qualified to deliver facts and educated opinions. Because of loose expert standard rules, the opinions of inappropriately trained experts sometimes parade as fact. As you can imagine, this can adversely affect the verdict of a case. You wouldn't trust a podiatrist to perform open-heart surgery, so why would you trust his opinion on such a surgery in court? Some state court rules are weak enough to let in the occasional unqualified expert.

ALEC's *Reliability in Expert Testimony Standards Act* is designed to ensure state courts follow the same guidelines for admitting expert opinions about scientific and technical matters as judges in the federal courts. The legislation provides courts with a nonexclusive list of factors they should consider in determining reliability, requires courts to hold pretrial hearings to ascertain the reliability of an expert, and encourages thorough appellate review of a trial court's admission of expert testimony. Under the act, a proffered scientific opinion must have been developed in accordance with the scientific method. And by ensuring that the federal and state standards are similar, the model act prevents forum shopping while keeping state courts from being flooded with "junk science" cases that cannot pass muster in federal courts.

Temper the High Costs of Discovery

Discovery occurs before every case goes to trial and involves the sharing of any number of potentially relevant documents and information between sides of a case. With the increased use of electronic information has come a skyrocketing increase in the documents requiring overview during discovery. Internal company estimates have found that discovery processing, review, and production for a midsize case would cost a large company between $2.5 million and $3.5 million. $2.5-3.5 million just to prepare in part for a case, and the defendant may not be in the wrong. $2.5-3.5 million that could be spent on research and development, jobs, or lowering prices to the consumer.

In an effort to taper the woes associated with modern-day discovery, ALEC's model rules incorporate court rules to govern the discovery of electronically-stored information and waiver of privilege in state court litigation. The legislation would reduce unexpected and unnecessary discovery costs and burdens by updating discovery definitions, ensuring requested information is relevant and reasonably accessible, allowing sanctions in the case of intentional or reckless violation, allowing flexibility in production form, and creating consistent standards for protection against the waiver of attorney-client privilege.

Jury Reform

Not only is improving the jury system an important civic endeavor, it would

make a positive step toward encouraging fair and appropriate verdicts. Litigators frequently observe that if juries included a fair share of business owners, professionals, and working Americans, they would be more likely to reach well-reasoned decisions and there might be fewer excessive and bizarre verdicts.

ALEC's *Jury Patriotism Act* addresses and breaks down each of the barriers to jury service. The Act increases the flexibility of jury service by providing an easy postponement procedure that would allow any juror to reschedule service once for any reason. It eliminates long terms of service in favor of a one-day/one-trial system. To address financial hardship issues that undermine citizen participation in lengthy civil trials, the *Jury Patriotism Act* provides wage replacement or supplementation through a "lengthy trial fund" financed by court filing fees. It eliminates all automatic disqualifications or exemptions based on occupation. The Act also provides guidance to the courts with respect to the acceptable grounds to excuse a prospective juror from service. Finally, the Act increases the penalty for those who ignore a juror summons to better reflect the importance of jury service to society. The reforms included in the *Jury Patriotism Act* would ensure that all able citizens, regardless of income or occupation, would be able and expected to serve. A litigant's right to a representative jury and a citizen's right to serve will be better protected. And verdicts may more accurately make the injured economically whole as is the intent of the tort system.

Class Action Reform

We have all heard of—and likely, whether knowingly or unknowingly, been a party to—a class action lawsuit recovering mere coupons for the plaintiffs and millions for the attorneys handling the case. Class actions were created with the goal of encouraging holders of small claims to bring their cases by allowing them to share court costs and other fees. However, they have since been abused by those seeking to re-regulate entire industries and win hefty court fees in the process. Class actions can serve a legitimate purpose. ALEC developed its *Class Action Improvements Act* to reign in the abuse of this mechanism and to encourage class actions to serve their proper function.

ALEC advocates multiple changes that states could adopt in an effort to achieve modest, but significant, improvements to their statutes and/or court rules governing the use of the class action devise, including instituting proof and administrative prerequisites for certification, limiting the scope of class-actions plaintiffs to home state residents, providing for the interlocutory (or immediate) appeal of a class-action certification, and encouraging courts to consider things like whether the expense and effort needed to litigate a case as a class is justified considering the recovery expected to be obtained by each class member. By setting these prerequisites and guidelines for the certification of a case before it goes to trial, the act ensures that only appropriate plaintiffs are joined in a class and that the power of settlement generally felt by attorneys representing class actions is not abused.

Consumer Protection Reform

State Consumer Protection Acts or Deceptive Trade Practices Acts were formed to provide protections to consumers in the same manner that the Federal Trade Commission (FTC) does. The FTC has been given the authority to decide when unfair and deceptive trade practices occur and maintains that no private right to sue exists under its statutory authorization. However, all 50 states and the District of Columbia allow consumers to bring private rights of action under their consumer protection laws. ALEC has found that when these private rights of action exist, it is in the best interest of the state to include provisions requiring the same standards that need to be met to prove a claim valid in the tort system: proof of a false statement, an intent to deceive, reliance on the statement, and, of course, actual harm. Working without such requirements creates an incentive to sue and opens up a realm of potential litigation that can destroy businesses, raise consumer costs, and even remove from the market the many product choices that Americans currently enjoy. Such clarity is needed to keep businesses and their owners from being unnecessarily punished like Jin and Soo Chung of Custom Cleaners, the recipients of the frivolous $54 million pants claim.

ALEC's *Private Enforcement of Consumer Protection Statutes* structures the private right of action under such laws to reflect sound public policy. Reforming your state's consumer protection act can go a long way toward minimizing frivolous litigation.

Honesty in the Legal Profession

ALEC developed its *Restore Honesty in Lawyering Act* in response to the astonishingly high number of recent national incidents where leaders in the personal injury and mass tort bar have been caught in illegal schemes against clients, courts, and the general public. The bill requires more transparency and better checks and balances, and is based on the Code of Professional Conduct that the American Association for Justice enacted in response to the recent scandals among its members. The model legislation would place very basic duties on plaintiffs' attorneys to fully inform their clients about the costs that would be associated with representation, including both the contingency fee and any additional expenses. Should an attorney ultimately be entitled to a contingency fee award, the attorney must provide the client with a written accounting of time

spent per attorney, total fee amount, hourly fee, and an itemized list of costs. The bill would also place a duty on all attorneys to disclose potential conflicts of interest, for example, financial relations with jurors or judges. Lastly, it would address lawyers' duties to the public by subjecting them to consumer protection legislation, particularly as they advertise and make other representations to the public about their professional services.

With a bit of transparency and accountability, illegal schemes and improper treatment of clients would diminish. And some faith might be restored in less abused legal systems.

Regulatory Compliance Defenses

When a product liability case is brought, the judge and jury often take into account established standards relevant to the product, sometimes giving deference to state and/or federal regulations on a product. ALEC created its *Regulatory Compliance Congruity with Liability Act* to keep a state's regulatory system from working against its civil-justice system and to give the two systems a bit of congruency. The model bill does not give a free pass from liability to a business whose product or service causes harm. Rather, this legislation creates a supposition of propriety when producers meet existing government standards and regulations. In short, the model bill attempts to refocus liability on those manufacturers and service providers that do not follow the law, and, as a corollary, provide an incentive for producers to comply with all regulatory standards. The Regulatory Compliance Congruity with Liability Act gives legislators three options in deciding how much deference to give to existing regulatory standards. By encouraging regulatory and legal systems to complement rather than work against each other, law-abiding businesses will be less likely to be penalized for focusing their company resources on complying with the law.

Collateral Source Rule

What is termed the collateral source rule bars the admission as evidence of information showing that the plaintiff has been otherwise compensated for an injury being considered in a case. Effectively, under such a rule, the jury cannot know if the plaintiff has already received compensation from another party for the injury being discussed—typically from an insurance policy. Barring the admission of such information is problematic and can lead to double payment to the plaintiff. For this reason, repealing a collateral source rule and allowing the jury to see collateral source payments can help temper a costly legal system.

Liability Apportionment Reform

When cases involve multiple defendants, liability is usually divided among the defendants based on the jury's gauging of each defendant's responsibility. Under an archaic doctrine called the joint liability rule, all defendants had a responsibility to cover all damages. If one defendant couldn't cover its share of damages, the other defendants, being jointly liable, had to pay the damages. The deepest pocket would often be hit the hardest.

Under what is termed joint and several liability, the same rule effectively applies, however only above a certain threshold of liability. Some states may set this threshold at 25 percent, some at 50 percent, some elsewhere. In essence, a defendant judged to be more liable than the set threshold is held jointly liable for all damages. Here, a defendant 26 percent at fault could end up paying 100 percent of the damages.

ALEC advocates a third, more fair liability-apportionment standard, and it is easy to understand: a defendant must pay damages in proportion to its established liability. If considered 30 percent liable, the defendant must pay 30 percent of the verdicted damages. A simple, common-sense rule that can go a long way toward creating a fair legal environment for businesses and health-care providers alike.

The reforms articulated above and the many other reforms taken on by ALEC's Civil Justice Task Force will go a long way toward improving poor state legal systems. These reasoned, focused, and effective reforms will reap many benefits: state health care systems will more accurately reflect the cost of providing medical attention rather than the cost of litigating cases, small businesses won't be discouraged by frivolous lawsuits, businesses will be more willing to innovate, and citizens will have faith in a justice system that provides just that. I encourage you to consider how your state's legal system can best be served. ■

MORE INFORMATION

ALEC is here to help you.
Please contact Amy Kjose at (202) 742-8510 or akjose@alec.org.

1 PricewaterhouseCoopers, The Factors Fueling Rising Healthcare Costs 2006 (2006), http://www.ahip.org/redirect/PwCCostOfHC2006.pdf.

2 David M. Studdert ET AL., Defensive Medicine Among High-Risk Specialist Physicians in a Volatile Malpractice Environment, 293 J. of the Am. Med. Ass'n. 2609, 2609-17 (2005), available at http://jama.amaassn.org/cgi/content/full/293/21/2609.

3 Massachusetts Medical Society. Investigation of Defensive Medicine in Massachusetts. (November 2008), available at http://www.massmed.org/AM/Template.cfm?Section=Research_Reports_and_Studies2&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=27797.

(***Outsourcing**, continued from p. 10)*
3,650 desktop devices, and 1,100 printers. The deal also covers wireless field communications equipment. On behalf of Minneapolis, Unisys now handles an average of 1,600 service desk calls and 160 equipment installs, moves, adds, and changes per month and has saved the city more than $18 million, according to Sourcemagazine.com, a business-to-business Web site covering the IT outsourcing industry.

Some Missteps

The County of San Diego's experience with outsourcing, however, was more uneven. In 2001, the county signed a five-year contract with Computer Sciences Corp. The scope was large, and CSC fell behind, leading the county to withhold $34 million of a $44 million payment. Disputes continued until the contract's term expired.

In January 2006, the county signed a $667-million contract with Northrop Grumman Information Technology, replacing CSC. Sub-contractors on the project include Hewlett Packard's EDS, BearingPoint, and AT&T. Although the episode forced the county to endure some criticism of the outsourcing plan, its problems were not unique. David Perara, an independent IT analyst told *CIO* magazine in May 2006 that commercial companies also struggle with large outsourcing deals, and the second experience is usually better than the first. A problem with the first San Diego deal—which the county took responsibility for—was a lack of sufficient detail in the contract regarding prices, responsibilities, and service levels.

The new contract includes benchmarking changes that will allow for better price comparisons. For instance, all costs associated with a desktop, such as networking and security, were previously bundled into one price, which made it difficult to compare prices. Those costs are now being split up.

Controversy in Virginia

Perhaps the biggest tussle over IT outsourcing and privatization has been in Virginia. Virginia was among the first states to launch a large-scale statewide IT outsourcing project aimed at consolidating and streamlining its many isolated information systems.

Controversy about the $2.3 billion Virginia IT outsourcing program, the largest such state program so far, had been simmering since last June, when the Virginia Information Technology Authority (VITA), the agency overseeing the project, fired the state's chief information officer, Lemuel Stewart Jr., for withholding a $14.3 million payment to the state's prime IT contractor, Northrop Grumman, because certain goals had not been met on time.

In August, VITA named George Coulter to the post. Coulter's term got off to a rocky start when, three weeks into his position, he fired three subordinates who had been most critical of Northrop Grumman's work. The action drew criticism from the Virginia legislature, as well as concern from some VITA directors.

Northrop Grumman indeed missed deadlines and there were some issues with implementation and transition. As the private sector learned years ago,

BEST PRACTICES

To ensure an IT outsourcing or privatization project goes well, states and cities can look to the experience and the models used in previous projects. Here are six.

Bring union leadership in early

To overcome union objections in Minneapolis, the area SEIU local was included in the original business planning of the outsourcing agreement. Moreover, the city negotiated a three-year job guarantee for the people that Unisys hired. A total of 26 union IT personnel were offered jobs by Unisys, of which 14 accepted, and the remaining 12 found other jobs in Minneapolis government. Unisys offered the 14 who transferred signing bonuses and improved benefits. Minneapolis saves about $2 million a year, mostly because it has reduced staff and eliminated 40 contract workers at $100 to $200 an hour.

Engage the transferred IT staff through training

The Minneapolis city staffers who were hired by Unisys were trained at Unisys University, a virtual learning center, where they learn about Unisys' technologies and processes.

Listen to the users

Once the staff was trained, Unisys launched a "discovery" process, asking stakeholders including department heads at police, fire, and public works, what IT changes and improvements they wanted to see. Unisys staff also met with existing IT staff, technical teams, and field service teams to add to their knowledge base.

Quantify deliverables

After its dispute with CSC over project deliverables, the County of San Diego created 59 line items to delineate Northrop Grumman's responsibilities for running the help desk. Among those responsibilities, Northrop Grumman must produce and submit help desk solutions and service-level requirements, and the county has responsibility for reviewing and approving them. A 152-page document defines the operational services and 76 minimum acceptable service levels, each with its own penalty (transaction response time has nine service levels associated with it, and desktop repair has 15).

Keep State CIOs independent

It remains to be seen if McDonnell will be successful in reorganizing the CIO reporting lines, but the state and its taxpayers may be better served if the CIO operates at arm's length from both the governor's mansion and the legislature, reporting instead to an authority or department head.

This avoids politicizing the position and subjecting it to unwarranted pressures, such as to select or defer to in-state contractors. It also insulates CIOs from some of the more "religious" battles that sometimes play out in legislatures, such as lobbying for mandates that have the effect of limiting choice, such as laws that require states to use only open source software or particular applications.

one way to get your contractor back on track is to withhold payment, especially if deliverables specified in writing were not met. It is not clear whether Northrop Grumman used its leverage as a major Virginia employer to go over Stewart's head, or what, if anything, may have happened behind the scenes, but had the state of Virginia acted like a peeved customer and pressed its supplier for adequate resolution, a lot of woe could have been avoided.

Having taken office in January, Gov. Bob McDonnell appears to be interested in moving the program forward. The state recently passed a point in its contract where it could have either sued Northrop Grumman for failure to complete its work or terminated the contract completely. Instead the state will continue working with Northrop under a corrective plan the contractor submitted last year. Pushing it forward will be a major priority for Jim Duffey, Virginia's incoming secretary of technology, to whom McDonnell wants state CIO Coulter to report.

In the nearly five years since the contract was awarded, VITA has replaced 27,300 outdated PCs at 68 agencies, shifted more than 1,000 state Web sites onto a statewide network, standardized e-mail services, upgraded security measures, vastly improved data backup and storage, and implemented statewide support and help desk functions. More than 630 state IT workers have transitioned to the VITA payroll and now work out of a single $35 million, state-of-the-art IT facility in Chesterfield County. Another 430 mid-level tech jobs have been created at a $33 million VITA backup facility built in Southwest Virginia's Russell County. ■

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American Legislative Exchange Council ALEC

The American Legislative Exchange Council, the nation's largest individual membership association representing state legislators and the private sector.

Ideas to Create Jobs in the States

BY MICHAEL HOUGH

With the unemployment rate near 10 percent nationally, lawmakers in the states are naturally looking for ways to create jobs. ALEC's Commerce, Insurance, and Economic Development Task Force has a number of model bills that will help bring employers to your state and create private sector jobs. Presented here are some examples of ALEC model legislation, which can make your state more business-friendly and lead to job creation.

Michael Hough is the director of ALEC's Commerce, Insurance & Economic Development & Public Safety and Elections Task Forces.

Business Ombudsman Act

The BOA would create the position of a Business Ombudsman who would act as an advocate for businesses in the state. Modeled after the National Ombudsman in the Small Business Administration, the Business Ombudsman would be appointed by the governor for the purpose of helping businesses comply with government regulations. The Ombudsman would issue an annual report to the legislature, which would grade how well each state agency worked with businesses.

According to the Small Business Administration, the National Ombudsman was created "to ensure that federal regulatory enforcement is effective, and not excessive." The National Ombudsman has worked to overturn erroneous fines on businesses including canceling a $64,000 fine for importing counterfeit handbags—when it turned out the handbags were not counterfeit. The agency also works to pay outstanding government bills to contractors.

A number of states already have a Business Ombudsman including: Kentucky, Michigan, North Carolina, Ohio, Oregon, South Carolina, and Wisconsin.

Regulatory Flexibility Act

First drafted by ALEC in conjunction with the Small Business Administration's Office of Advocacy, the *Regulatory*

Flexibility Act is based on the federal *Regulatory Flexibility Act* originally passed in 1980. It seeks to lessen the burden of regulatory polices on small businesses.

Since being adopted as ALEC model legislation in 2003, the *Regulatory Flexibility Act* has seen stunning success. It has been adopted in full or in-part in 44 states, leaving only six states that have yet to pass some form of this legislation. States that have adopted this bill have seen significant improvements in government-business relations and it has been successful in promoting a business-friendly environment.

The goal of the *Regulatory Flexibility Act* is simple: lessen the detrimental impact of regulation on small businesses. It recognizes that regulatory burdens are often more difficult for small businesses to bear and achieves its goal by requiring all proposed regulations that would impact small businesses to undergo an extended review process. During this process, small businesses have the opportunity to comment on pending regulations, and the regulatory agency is required to submit estimates of the cost of the proposed regulation on small businesses as well as list alternative methods of compliance that are available to all businesses. The act also requires periodic reviews of all regulations.

Professional Licensure and Certification Reform Act

This legislation seeks to counteract the movement in many states to increase the number of occupations that require a professional license. In many states professions like interior designers, landscapers, acupuncturists, and even fortune tellers are required to be licensed by the state. This serves as an unnecessary entry burden to entrepreneurs looking to start a business.

The act would limit new license laws to those that affect public health, safety, and welfare.

Council on Efficient Government Act

This legislation, which is modeled after Governor Jeb Bush's efforts in Florida, would create a council to outsource current government functions to the private sector. With the President's stimulus bill, and increases in federal spending, we have seen a large increase in the number of government jobs. Unfortunately, the private sector has lost millions of jobs since this recession began. This act would help create private sector jobs and save taxpayers money.

This legislation is nothing more then a simple yellow book test, which means if there are businesses in the yellow book that perform a job—the government doesn't need to compete with them.

Enterprise Zone Act

The EZA became an ALEC model bill in 1995 after being championed by President Ronald Regan in the 1980s. This model legislation contains a number of good ideas to help the most economically depressed areas by reducing taxes and removing unnecessary government barriers to the production and earning of wages and profit. The legislation contains specific solutions to aid businesses in Enterprise Zones. Businesses would be able to quickly attain all the necessary permits and licenses. Taxes would also be greatly reduced or eliminated. For example, local businesses receive a 50 percent credit on income taxes and sales taxes are reduced by 100 percent in these areas. Businesses in these areas would also pay no unemployment taxes.

Free-market Amendment for State Constitutions;

This amendment simply states "It is the policy of the state of _____ that a free enterprise system shall govern trade and commerce in this state to promote the dispersion of economic and political power and the general welfare of all the people."

Currently, only Utah has a free-market provision in their constitution. With the government bailing out major financial institutions and maintaining ownership in auto-companies, this is a great way for state lawmakers to support the private enterprise system that has made this nation great. ■

MORE INFORMATION

All of these model bills can be found at www.alec.org in the Commerce, Insurance, and Economic Development model legislation section.

For more information, contact Michael Hough at mhough@alec.org.

Get Online:

The Keys to Social Networking for Legislators

BY MEGHANN OLSHEFSKI

Look for updates in your e-mail box soon about free Leadership Institute training on new media and social networking at ALEC's Annual Meeting in San Diego.

Every day, people change the way they communicate with their peers. Now more than ever, candidates need to embrace modern media and learn to connect with supporters where they are–online–in order to succeed in the evolving political sphere. | There are many ways that you can start engaging with voters online. Here are just a few technologies that you can implement right now to get your message out.

Friend Me on Facebook

Facebook is one of the fastest growing social networks in the world with over 400 million users world-wide, and the fastest growing demographic on the site is 25-40 year olds.

Launch. Don't just create a personal profile, create a "Politician Page." A personal profile can limit your ability to communicate with your supporters because they limit any one person from "friending" more than 5,000 people. Once you reach 1,000 friends, you won't be able to message the group as a whole. Flesh out your page with key information, but don't be afraid to get personal. Let folks know what are your favorite movies or books–your supporters will feel a personal connection and relate to you more. Visit http://www.facebook.com/pages to launch your page.

Build. Use Facebook advertising to target key demographics and draw supporters to your page. Encourage your current supporters to invite their own friends and social networks to support your page. Visit http://www.facebook.com/advertising.

Engage. Once you have a page, don't just broadcast campaign messages and post press releases–interact with your supporters. Social media is a two-way communication, so ask for feedback, host contests, etc. The worst thing you can do is create a page and never return to it. Respond to messages from supporters on your wall. Reward fans that go the extra mile.

Innovate. You can integrate tools like Facebook Connect and a Facebook Fan Box into your campaign website to draw supporters to join your Page. Also, be sure to put a link to your campaign site in the information section of your Facebook page. The goal of any social media campaign should be to convert your Facebook fans into supporters, volunteers, donors, and finally voters.

Follow Me on Twitter

In 140 characters or less (a tweet), tells supporters what you're doing on the campaign trail that day and at that very moment. You can even update Twitter from your mobile phone. You follow supporters and supporters can follow you back.

Register a username. I recommend reserving just your name or the name that you use in your campaign's Web site URL. You should try to reserve the same name across all social networking platforms for consistency.

Once registered, start tweeting. It may seem awkward at first, but once you start engaging with other tweeters, tweeting will become more natural to you.

Respond. It's important to follow your supporters in return. Twitter, also a social medium, is two-way communication. Respond to your follower's concerns by replying to them.

Build a Community

Don't treat your online supporters the same way you would the press or your offline supporters. Consider breaking major campaign news to your online supporters first, to make them feel like they are part of something important. You can even post video announcements on YouTube.

Need Assistance?

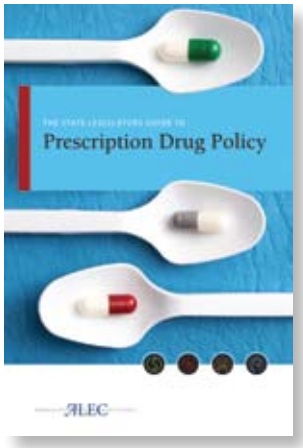
The Leadership Institute offers several different workshops that teach you how to compete successfully in 21st century politics to create an online strategy for your cause or candidate. Visit www.leadershipinstitute.org to access the Institute's complete 2010 training schedule. ■

Meghann Olshefski directs the Leadership Institute's Employment Placement Service. In her spare time she is the site editor for TechRepublican.com—a 2009 Golden Dot Award winner for "Best Blog in National Politics."

Health Care Policy News

BY DAVID MYSLINSKI

If you attended the Health and Human Services Task Force meeting at ALEC's 2009 States & Nation Policy Summit, you may have noticed a new publication on display—*The State Legislators Guide to Prescription Drug Policy*.



The *Guide*, which was mailed to ALEC legislative members, discusses the challenges policymakers face regarding prescription drugs—in particular, ensuring ample access to life-saving medicines without overregulation.

Some recent efforts intended to make prescription drugs more affordable and increase their accessibility consist of implementing price controls, using restrictive drug formularies that harm our most vulnerable citizens, and banning the advertisements that raise awareness of pharmaceuticals.

The *Guide* not only rejects those knee-jerk "reforms," but it provides ALEC model legislation and private-sector solutions that legislators can use in their states. Some of the most notable ways to ensure accessibility include many privately-run programs—such as the Partnership for Prescription Assistance or Together Rx Access—that allow citizens who lack prescription drug coverage to purchase brand-name and generic drugs at immense savings.

It's answers like these that make ALEC's *State Legislators Guide to Prescription Drug Policy* an essential tool in navigating the complex world of prescription drug policy with an eye toward free-market, patient-driven principles. But prescription drug policy isn't the only health reform issue legislators are grappling with this session.

While Congress is calculating whether it can push through a federal health care reform package and still survive this November, some states have already taken a stab at reform—some with great success, some with tremendous failure.

The 2010 edition of the *State Legislators' Guide to Health Insurance Solutions*—published by ALEC and the Council for Affordable Health Insurance (CAHI)—will help lawmakers examine the demographics of the uninsured population and what to do about it; explore vital consumer protections that also preserve the private insurance market; analyze "hot topics" in health policy; and discover the results of reforms tried (and failed) in other states.

One notable addition to this year's *Guide* is a discussion of ALEC's *Freedom of Choice in Health Care Act*, which has been introduced or announced in well over two-thirds of the states. This ALEC model resolution affirms individuals their right to purchase health care services with their own money, and frees them from any requirement to own health insurance.

The *Guide* also discusses recent developments in states as they have attempted their own reforms. One now infamous example is Massachusetts, which in 2006 implemented a comprehensive health care plan that is strikingly similar to federal proposals. Believing a common misconception, Massachusetts forced individuals and businesses to purchase health insurance with the intent of lowering costs for everyone. Costs didn't go down—and premiums are now rising faster than the national average. In addition to the individual and employer mandate, Massachusetts created a health insurance exchange and expanded its Medicaid program. Since 2006, state spending on health care has risen by nearly half, and their coffers have run dry. New tax hikes are being considered for individuals, businesses, and medical providers.

Further south, some reforms have proven successful. In 2005, Florida overhauled its Medicaid program and gave beneficiaries more control over their health. Florida's Medicaid recipients now have the ability to shop multiple insurance companies for the benefit package that best fits them. They also have the freedom to purchase insurance through an employer using the financial assistance Medicaid provides. These changes have allowed those on Medicaid to access services that were never before covered. And Florida did this while saving taxpayers money.

So even if Congress doesn't touch health care in the near future, there is hope for states to enact real solutions that expand coverage, reduce costs, and, most importantly, improve the health of their citizens.

The *State Legislators Guide to Prescription Drug Policy* has been mailed to all ALEC members; the 2010 *State Legislators' Guide to Health Insurance Solutions* will be released in the spring. Both publications will be available for download at www.alec.org.

David Myslinski is the director of ALEC's Education Task Force.

Virginia First to Pass Health Care Freedom Act

On March 4, Virginia became the first state in the nation to enact legislation to protect their citizens from being forced to purchase health insurance or participate in any health care system against their will. ALEC has identified 37 other states that have similar bills pending or have announced that they will introduce this legislation. Already, at least one house of the legislatures in Idaho, Missouri, and Tennessee have also passed such legislation.

These legislative initiatives are based on ALEC's model *Freedom of Choice in Health Care Act*. Under the legislation, any state attempt to require an individual to purchase health insurance—or forbid an individual from purchasing services outside of the required health care system—would be rendered unconstitutional. The measure may also cause a federalism clash if Congress passes a law with either of these provisions.

"Control over our own individual health care choices is something most Americans take very personally. It is not surprising that so many state legislators are eager to pass legislation to protect their constituents from any health care mandates, either from the state or federal government," said Christie Herrera, director of ALEC's Health and Human Services Task Force, which is coordinating the nationwide effort.

"It is urgent for states to take action and protect the liberty of their citizens so they can direct their own health care in the way they see fit. Our history proves it is economic freedom that helped us reduce poverty and provide the good health care we have now. Command-and-control mandates advance destructive behavior on many levels," said Kansas State Senator Mary Pilcher-Cook, sponsor of SCR-1626, Kansas' *Health Care Freedom Act*.

The *Freedom of Choice in Health Care Act* has already been filed or prefiled in 33 states—Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Lawmakers in an additional four states—Montana, North Carolina, Rhode Island, and Utah—have publicly announced their intentions to file the legislation. A citizen-led initiative has also been announced in Colorado. ■

A complete map with links to the legislation in each state is available online at www.alec.org.

POLICY

Christie Herrera with the American Legislative Exchange Council discusses ALEC's model bill and health care reform efforts in the states. She is pictured here with ALEC legislative members form Pennsylvania and grassroots activists supporting our model bill in January of this year. This press conference was covered by local newspapers and TV, as well as MSNBC.

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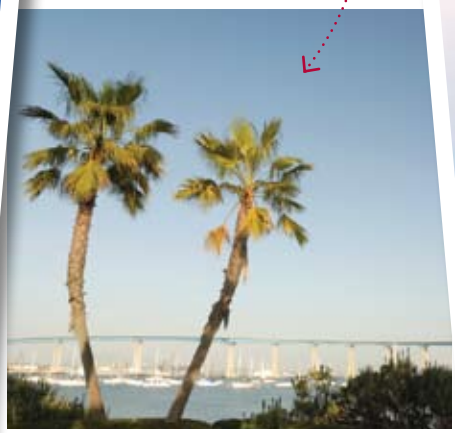
Add these up-coming ALEC events to your calendar!

Calendar

Spring Task Force Summit
April 23-24, 2010

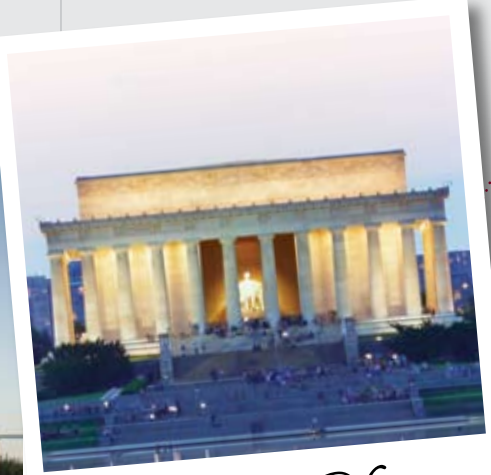
St. Louis, MO

Annual Meeting
Aug. 5-8, 2010



San Diego, CA

States & Nation Policy Summit
Dec. 1-3, 2010



Washington, D.C.

For more information about ALEC's annual conferences, visit www.alec.org